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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA
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12 ROBIE A. DAVIDSON,
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14 Plaintiff,

15 v.
16 ELDON VAIL, et. al.,
17

18 Defendants.

19 CASE NO. 11-6018 RJB
20

21 ORDER ADOPTING REPORT AND
22 RECOMMENDATION
23

24 This matter comes before the Court on the Report and Recommendation of U.S.

25 Magistrate Judge J. Richard Creatura. Dkt. 14. The Court has considered the Report and
26 Recommendation, objections, and the remaining record.

27 This civil rights case concerns medical treatment Plaintiff asserts he was due as a result
28 of a broken clavicle. Dkt. 4. The facts and procedural history are in the Report and
29 Recommendation (Dkt. 14, at 1-2), and are adopted here by reference. The Report and
30 Recommendation recommends that the case be dismissed without prejudice for failure to exhaust
31 administrative remedies pursuant to Washington State Department of Corrections (“DOC”)
32 policy, and that discovery be stayed. Dkt. 14.

1 Plaintiff filed objections. Dkt. 15. He argues that his case should not be dismissed for
2 failure to exhaust administrative remedies. *Id.* He argues that he sent kites and letters to the
3 “involved parties.” *Id.* He also alleges that he was “unaware” he could have grieved a medical
4 issue. *Id.* Plaintiff states that he is now in custody at the King County, Washington, jail, and
5 was there when he filed suit. *Id.* He argues the case should not be dismissed. *Id.*

6 Plaintiff’s objections do not provide a basis not to adopt the Report and
7 Recommendation. Plaintiff’s objections are largely a repetition of his prior arguments. He does
8 not deny that he did not file a grievance regarding the medical care at issue here in compliance
9 with DOC policy. Aside from his bare assertion, he does not make a showing that he was
10 unaware of the availability of the grievance process or that it would have been futile. Plaintiff
11 makes no showing that he was not in DOC custody when all the relevant events occurred,
12 including while under the supervision of a DOC community custody officer. As stated in the
13 Report and Recommendation, discovery should be stayed and Plaintiff’s case should be
14 dismissed without prejudice.

15 Accordingly, it is **ORDERED** that:

16 1) The Report and Recommendation (Dkt. 14) is **ADOPTED**;

17 2) Discovery is **STAYED** and this case is **DISMISSED WITHOUT PREJUDICE**;
18 and

19 3) The Clerk is directed to send a copy of this Order to Plaintiff, counsel of record, and
20 to the Hon. J. Richard Creatura.

21 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
22 to any party appearing *pro se* at said party’s last known address.

Dated this 22nd day of May, 2012.

Robert F. Bryan

ROBERT J. BRYAN
United States District Judge